



STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0023

JOHN ELIAS BALDACCI
GOVERNOR

SUSAN A. GENDRON
COMMISSIONER

December 4, 2009

Dear Members of the Appropriations and Education Committees:

I write to inform you of proposed rules changes that I have submitted to the Secretary of State's Office that will have the effect of bringing Maine's special education rules into further alignment with federal regulations. The Appropriations Committee requested I examine the possible savings from such a change, and a majority of superintendents who have participated in discussions around financial strategies since June have asked the Department to consider these changes, as well as other cost-containing measures. Most recently, a working group on special education (that included superintendents, teachers, principals and special education directors) that I convened to review the regulations and any other cost-reduction strategies, such as regionalized programs, made a series of recommendations, including these rules changes. In reviewing the potential changes, Governor John Baldacci has also supported this effort to bring Maine's requirements into even greater alignment with federal IDEA regulations and to not exceed them in any area, whenever possible.

The Maine Department of Education is proposing changes to Chapter 101: Special Education rules to accomplish the following:

- No longer exceed minimum federal requirements as a way to contain costs; and
- Effect more uniform statewide application of special education rules and provision of services to ensure appropriate and consistent services for all students statewide.

The Department has submitted two proposed rules changes: an emergency rule change to a major substantive rule and a non-emergency provisional rule change to the same major substantive rule – in both cases, Maine Department of Education Regulation 101.

The emergency rule is being promulgated because of the immediate savings it will generate and the current economic and budgetary climate which demands quick action to find savings wherever possible, especially when those actions will not have a negative impact on services. This emergency rule change will go into effect immediately upon our submission for emergency adoption in early January and will be in effect for one year only.

The provisional rule change will require legislative action and incorporates the cost-containing changes in the emergency rule above; it incorporates the cost-containing changes in the emergency rule above, along with changes (that were already adopted in a separate June 2009 emergency rule) regarding summer services and some technical federal IDEA language, and additional clarifications and provisions to ensure consistency of implementation. Once approved and finally adopted by the Legislature, this rule will supersede the others and have no end date.

Some of the more significant provisions in the proposed emergency and provisional rules:

- Allow school systems to begin post-secondary transition planning at age 16 rather than 14. Developing the plan for vocational rehabilitation and other possible post-secondary services two years before typical graduation is consistent with federal regulations and provides ample time to assess and plan for transition. Districts may choose to begin planning earlier, but would not be required to do so. *(Emergency and provisional rule)*
- Change the statute of limitations on due process hearings to the federal standard of two years, down from four years. This will result in shorter hearings (two years of evidence and experience compared to four) and reduce legal fees and paperwork for all parties. *(Emergency and provisional rule)*
- Implement a data-based procedure for eligibility determination and refinements to the eligibility criteria to ensure uniform application across the State so that all children receive appropriate and consistent services, regardless of where they live. *(Emergency and provisional rule)*
- Change the timeline for evaluations of children ages 3 to 5 from the current 60 calendar days to 45 school days, consistent with the timeline for school-age children. This reduces the summer staffing requirements for Child Development Services. *(Emergency and provisional rule)*
- Increase the use of technology to reduce the need for on-site monitoring. *(Emergency and provisional rule)*
- Amend the child “stay put” provision to align with the federal standard, which allows students to stay in their current setting during a due process hearing, but not during complaint investigations or stand-alone mediations. *(Emergency and provisional rule)*

Timeline, Status of Rules Changes

June 22, 2009	Emergency rule filed by the Department with Secretary of State; rule made language changes regarding summer services as a result of legislative action and also added federally-required IDEA language
November 24, 2009	Department filed proposed rules changes with the Secretary of State
December 2, 2009	Public notice of the two rules changes
December 21, 2009	Public hearing scheduled for both proposed rules changes
December 31, 2009	Final date for written public comment
Early January 2010	Department will file provisional adoption and emergency adoption.
January-April 2010	Legislature’s Education and Cultural Affairs Committee reviews provisionally adopted regulation for consideration of final adoption.

You can view the language of the proposed rules changes to Chapter 101 and the Informational Letter sent December 2, 2009 to superintendents on our Rules & Legislation page:
<http://www.maine.gov/education/rulechanges.htm>.

We are pleased to be able to share with you these proposed rules changes which will serve to reduce state and local costs, and provide more consistent delivery of appropriate services to children. I will be glad to brief your committee(s) on the proposed changes. Also, if you have questions in the meantime, please feel free to contact Jaci Holmes, the Department’s Federal-State Legislative Liaison, at 624-6669 or Jaci.Holmes@Maine.gov.

Sincerely,



Susan A. Gendron
Commissioner